

## **REMARKS**

### **A. Status of the Claims**

Claims 1-11 and 31-41 were pending at the time of the final Office Action. Claims 1 and 31 have been amended to further distinguish Whitin, and for no other reason. Claims 64-69 have been added. Upon entry of these amendments, claims 1-11, 31-41 and 64-69 will be pending.

### **B. Claims 1-11 and 31-41 Are Patentable over Whitin**

The Office rejects these claims as being anticipated by U.S. Patent No. 6,190,396 to Whitin *et al.* ("Whitin"). Applicant respectfully traverses.

#### **1. Claim 1 and Its Dependents**

Claim 1 is directed to a medical device that includes a body, a lumen, and a first needle guide channel. Claim 1 has been amended to positively recite a needle that is connected to a length of suture and backloaded into the first needle guide channel, the suture being threaded through the lumen such that the needle will be advanced out of the first needle guide channel by pulling on the length of suture.

Whitin does not disclose or suggest the medical device of claim 1 because it fails to disclose or suggest a needle that is connected to a length of suture and backloaded into a needle guide channel, the suture being threaded through a lumen such that the needle will be advanced out of the needle guide channel by pulling on the length of suture. Accordingly, claim 1 and its dependents are patentable over Whitin.

#### **2. Claim 31 and Its Dependents**

Claim 31 is directed to a medical device that includes a body, a lumen, and a first needle guide channel. Claim 31 has been amended to positively recite a needle that is connected to a length of suture and backloaded into the first needle guide channel, the suture being threaded

through the lumen such that when the length of suture is pulled in a first direction, the needle is advanced out of the first needle guide channel in a second direction, the first direction having a positive longitudinal component and the second direction having a negative longitudinal component.

Whitin does not disclose or suggest the medical device of claim 31 because Whitin does not disclose or suggest a needle that is connected to a length of suture and backloaded into the first needle guide channel, the suture being threaded through the lumen such that when the length of suture is pulled in a first direction, the needle is advanced out of the first needle guide channel in a second direction, the first direction having a positive longitudinal component and the second direction having a negative longitudinal component. Accordingly, claim 31 and its dependents are patentable over Whitin.

**C. New Claims 64-69 Are Patentable over Whitin**

New claim 64 is directed to a medical device that includes a body, a lumen, a first needle guide channel, and a needle that is connected to a length of suture and backloaded into the first needle guide channel. Applicant defined “backloaded” in the specification as follows:

The term “backloaded” means that the needle is positioned in the needle guide channel such that it will be advanced, sharp end first, out of the needle guide channel by the suture when an end of the suture is pulled.

Page 13, lines 7-9. This clear definition of “backloaded” controls. MPEP 2111.02 at 2100-50 (“Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim.”). An example of a backloaded needle is shown in FIG. 5:

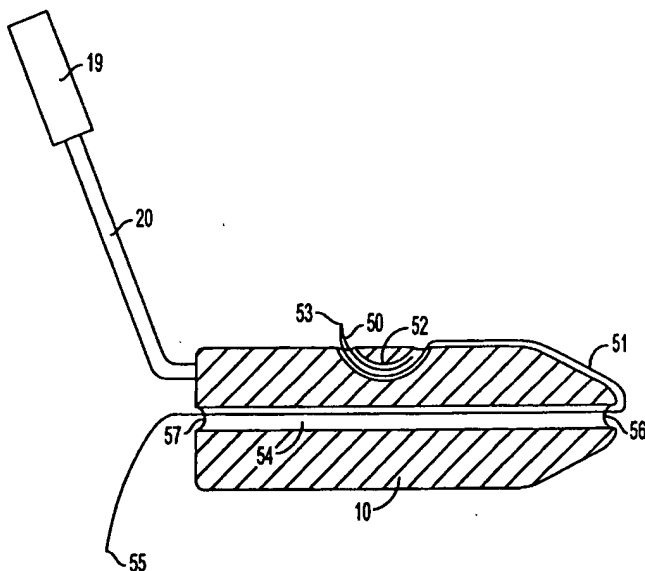


FIG. 5

Whitin fails to disclose or suggest a medical device with a backloaded needle that is connected to a length of suture. Accordingly, new claim 64 and its dependents are patentable over Whitin.

#### **D. Petition for Extension of Time**

Pursuant to 37 C.F.R. § 1.136(a), Applicant petitions for an extension of time of two months up to and including November 10, 2004 in which to respond to the Office Action mailed June 10, 2004. The Commissioner is authorized to deduct the process fee for this two-month extension of time, along with any additional fees under 37 C.F.R. §§ 1.16 to 1.21 required for any reason relating to the enclosed materials, from Fulbright & Jaworski Deposit Account No.: 50-1212/AFEI:002US/MTG.

**E. Conclusion**

Claims 1-11, 31-41 and 64-69 are in condition for allowance. Should the Examiner have any questions, comments, or suggestions relating to this application, he is invited to contact the undersigned attorney at (512) 536-3031.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark T. Garrett", with a stylized flourish at the end.

Mark T. Garrett

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